

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Rural Health Care Support Mechanism)	WC Docket No. 02-60

COMMENTS OF THE BENTON FOUNDATION

September 8, 2010

I. Introduction

The Benton Foundation (Benton) works to ensure that media and telecommunications serve the public interest and enhance our democracy. Benton pursues this mission by seeking policy solutions that support the values of access, diversity and equity, and by demonstrating the value of media and telecommunications for improving the quality of life for all.

Benton has long advocated for universal and affordable broadband access so that all Americans, regardless of income or region, may derive the potential benefits of this increasingly dominant telecommunications infrastructure. In 2007, Benton encouraged modernizing and reforming the Universal Service Fund. It's time, Benton then noted, to move beyond thinking about universal service as merely a safety net and begin thinking of it more as a trampoline that can catapult us into a new world of opportunity.¹ Therefore, it is gratifying that the Federal Communications Commission (Commission) proposes reforms to its critically-important rural health care program that align with recommendations put forth in the National Broadband Plan. In particular, Benton fully supports the creation of a health infrastructure program that will fill the gaps in the delivery of health care services by funding the creation of regional and statewide networks where broadband has not yet been deployed.² It is within the context of building on lessons learned from the Rural Health Care Pilot Program (RHCPP) that Benton offers the following comments.

At the request of the Commission's Wireline Competition Bureau, Benton has been exploring the challenges faced by a small number of RHCPP projects, primarily in securing the required fifteen percent match.³ Based on this limited experience, Benton recommends that the Commission approve the reforms outlined in the NPRM, that such reforms immediately go into effect, and that they be applied to the existing RHCPP projects as much as is logically possible.

II. Administrative Challenges

A. Paragraphs 35 through 39: Seeks comment on Non-Recurring Costs, Network Design, Administrative Expenses, and Maintenance Costs.

Benton endorses the above named paragraphs. The standards and procedures proposed in these paragraphs seem appropriate and reasonable. Some of the experiences of the Pilot Program have shown that the approach taken in these paragraphs is warranted, in order to cover real, and unavoidable, costs that are involved in implementing high speed networks. In order to lower

¹ *Universal Affordable Broadband for All Americans: How to Modernize Universal Service for the 21st Century and Connect Americans to a New Era of Digital Opportunity*. Benton Foundation September 2007, page 21.

² *Rural Health Care Support Mechanism*, WC Docket No.02-60, NPRM, para. 3.

³ *Rural Health Care Support Mechanism*, WC Docket No.02-60, NPRM, para. 6.

costs, considerable work is required to identify affordable options for high speed broadband and to design, engineer, and procure network elements to meet that objective.

B. Paragraph 37: Administrative Expenses.

In regard to the need for some amount of funding to support the process of “securing necessary agreements,” Benton strongly recommends that funding be allowed for legal review of contracts negotiated between the health care provider and the service provider. Additional comment on this topic is presented in the comment to Paragraph 42, Examples of Ineligible Costs.

C. Paragraph 38: Seeks Comment on “limitations on administrative expenses.”

Benton recommends that the limitation on administrative expenses be extended from the proposed 36 months to 48 months, for significantly large projects.

D. Paragraph 42: Examples of Ineligible Costs.

In Paragraph 37, Administrative Expenses, there is recognition that there are “costs incurred in preparing requests for proposals, negotiating with vendors,...” It goes on to state that the experience with the Pilot Program supports the need to provide some amount of funding for “administrative expenses in infrastructure projects, to support the process of designing the network and securing necessary agreements.” This comment is addressing the unavoidable legal cost that is involved in securing necessary agreements. To develop contracts that are for multiple years, involve millions of dollars, and involve issues of service levels and liability, it would be irresponsible to preclude the use of contract attorneys to ensure that the appropriate measures are included in the contract. This comment is not proposing to open the door for a wide range of legal services, and is not proposing that attorneys be engaged in expensive, ongoing contract disputes. This comment does propose that a limited amount of attention to critical contracts by contract attorneys be eligible for financial support.

E. Paragraph 43: Billing and Operational Expenses.

This language seems appropriate, with the assumption that administrative expenses are allowed, as per Paragraphs 35 to 39.

F. Paragraph 49: Detailed Project Description in 90 days of notice of project eligibility.

There are real and significant costs involved in preparing the deliverables described in this Paragraph. While agreeing totally with the objective, it is assumed that notification that a project

is eligible means that funding has essentially been approved, unless the participant does not provide the Project Description in an appropriate fashion. This comment is made to underscore the financial burden that will be placed on participants in preparing a detailed and appropriate Project Description, if it should turn out that funding is then denied. It is also recommended that 180 days be allowed for this process.

III. Matching Funds Challenges

A. Paragraph 44: Seeks comment on Minimum Participant Contribution.

While understanding the importance of stakeholder commitment to a new broadband health network, the fifteen percent match requirement has proved to be a significant burden to some entities involved in the Pilot Program, particularly in light of the current economic climate. If it is possible for some portion of the match to be waived, the benefits of improved health access could be more widely implemented. In any event, it is critical that the match requirement not be raised above fifteen percent. Benton has learned from one RHCPP project that it is very difficult for the health care providers to solicit additional funding from the same foundations that support their primary work.

B. Paragraph 45: Seeks comment on placing the contribution requirement above fifteen percent.

This is not a recommended path. While the argument for a higher contribution is understandable, the current economic climate makes it extremely difficult for organizations to secure fifteen percent, let alone a higher number. State funding, for example, has proven to be very difficult for some RHCPP projects.

C. Paragraph 46: Seeks comment on Evidence of Viable Source for the fifteen percent Contribution

Benton recommends that participants be given 180 days, as opposed to the proposed 90 days, to demonstrate that they have a reasonable and viable source for the fifteen percent matching funds.

D. Paragraph 47: Seeks comment on limitation of Eligible Sources for the matching funds.

Benton recommends that in-kind contributions, reasonably but measurably defined, should be eligible to be considered as matching funds as long as the contributor of the in-kind match is an eligible entity as defined in Paragraph 47. This would allow real assets, such as fiber optic

strands, which are owned or controlled by an eligible entity, to be used as an Eligible Source. The metrics for measuring the value of such assets could be reasonably established.

IV. Additional Capacity for Community Use

A. Paragraph 78: Additional Capacity for Community Use.

It is recommended that the Commission encourage the use of additional capacity in all categories listed in Paragraph 78. It is recommended that some approaches used to guide the cost allocation process could include the following:

1. Any excess capacity built into a health care network is made available on a wholesale basis to users and also to broadband service providers. A limit could be placed on leasing bandwidth, to ensure that a single entity did not gobble up all the excess capacity.
2. It could be stipulated that not-for-profit entities (government, public safety, schools, etc.) have a slightly reduced cost structure for using the services.
3. All net profits for the network that arise from such excess capacity (after legitimate network expenses are paid) shall be used by the health care provider network for network sustainability and network growth.

B. Paragraph 79: Priority Preferences for Projects that Include Additional Capacity for Community Use.

Benton recommends that inclusion of additional capacity be encouraged. In the first bullet in Paragraph 79, a difficult issue is raised: whether to prioritize those applications that provide for excess capacity. On the one hand, if the excess capacity will, per the application, be paid for by the non-health entities, then that would seem to qualify the applicant for additional consideration. On the other hand, a health-based application that shows definite need, even if it is unable to gather commitments from non-health entities, should not be unfairly penalized. The evaluation of applicants should be made on a case-by-case basis, without attempting to define an all-encompassing litmus test for approval. Situations will vary, and some latitude in the evaluation process must be allowed.

V. Conclusion

As Benton noted in 2008 in our report advocating a national broadband plan, as technology improves and bandwidth increases, telehealth applications will deliver revolutionary advances in treatment, while substantially reducing costs.⁴ The reforms proposed by the

⁴ *An Action Plan for America: using Technology and Innovation to Address our Nation's Critical Challenges*. Benton Foundation 2008, page 19.

Commission to its rural health care program will help ensure that rural America will also benefit from these advances.

Respectfully submitted,

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